

22 (d) The department shall send the customer a letter requesting
23 a copy of the customer's telephone bill, the name of the original
24 IXC, the name of the new IXC, and any other information the
25 department deems relevant, within ten (10) business days of
26 receiving the complaint:

27 (e) The customer shall return the requested information to the
28 department within twenty (20) business days of the department
29 mailing the letter to the customer.

30 (f) Within ten (10) business days of receiving the request of
31 information from the customer, the department shall send to:

32 (i) the customer, a letter acknowledging receipt of the
33 information;

34 (ii) the original IXC, a letter informing the original IXC of
35 the pending complaint and requesting the IXC to provide informa-
36 tion relevant to the IXC switch;

37 (iii) the new IXC, a letter informing it of the pending com-
38 plaint, requesting the customer's LOA, and requesting the new
39 IXC to provide other information the department deems relevant;
40 and

41 (iv) the LEC, a letter requesting the customer's telephone
42 bills for the time period since the alleged unauthorized IXC
43 switch.

44 (g) The original IXC, the new IXC, and the LEC shall return
45 the requested information to the department within
46 twenty-five (25) business days of the department request.

47 (h) Within fifteen (15) business days after receiving a copy of
48 the customer's LOA or other response from the new IXC, the
49 department shall determine if the customer authorized the new
50 IXC to switch the customer's IXC.

51 Section 3. Implementation.

52 (a) LECs doing business in the Commonwealth shall prepare
53 an information booklet describing customer's rights under this
54 bill. The LECs shall mail this booklet to their customers.

55 In addition, LECs shall provide the booklet to new customers.

56 (b) After switching a customer's IXC, LECs shall include in
57 the customer's next monthly statement a notice indicating that the
58 notice shall include the following:

59 (i) the customer's telephone number for which the LEC
60 switched the IXC;

61 (ii) the name, address, and telephone number of the original
62 IXC;

63 (iii) an acknowledgment to be completed by the customer
64 agreeing to the IXC switch.

65 Section 4. Sanctions.

66 (a) If the department determines that an IXC does not have the
67 required LOA, the department shall calculate and require the new
68 IXC to refund the following to:

69 (i) the customer, the difference between what the customer
70 would have paid in IXC charges at the original IXC and actual
71 charges paid to the new IXC;

72 (ii) the customer, any reasonable expenses the customer
73 incurred in switching back to the original IXC; and

74 (iii) the original IXC, any lost revenue, which shall consist of
75 the amount of the money the original IXC would have received
76 for the service used by the customer during the time the customer
77 received IXC services from the new IXC if the customer's IXC
78 had not been switched. This amount shall gross, irrespective of
79 expenses, what the original IXC would likely have incurred in
80 providing the IXC services to the customer.

81 (b) IXCs determined by the department to have switched a
82 customer's IXC without the proper authorization more than one
83 hundred (100) times in a twenty-four (24) month period, shall pay
84 a five hundred dollar (\$500) fine for each such incident.

85 (c) IXCs, determined by the department to have switched a
86 customer's IXC without the proper authorization more than five
87 hundred (500) times in a twenty-four (24) month period, shall be
88 prohibited from doing business in the commonwealth.

89 Section 5. Monitoring.

90 (a) The department shall track instances in which an IXC
91 switched a customer's IXC without the customer's prior autho-
92 rization.

93 (b) The department shall keep a record of each unauthorized
94 IXC switch for twenty-four (24) months.

95 (c) The department shall prepare an annual report of the
96 impact of this act and submit it to the Joint Committee on
97 Commerce and Labor.

98 Section 6. Sunset Clause.

99 (a) This act shall stay in effect for period of twenty-four (24)
100 months

101 (b) Each year, the Joint Committee on Commerce and Labor
102 shall review the department's report. Based on their review, the
103 committee shall decide whether the act's aggregate benefits to
104 consumers outweigh the costs to the commonwealth and the
105 inhibition to free competition in the long distance telephone
106 service market. Based on the committee's recommendation, the
107 legislature shall reauthorize the act for an additional twelve (12)
108 months.

h 923 § 179 (SB 1546).

101" in subd (a).

ng telephone systems in this country, while
 attempting to create unfamiliar new situations
 d on arbitrary decisions. New technologies
 to create new telephone numbers through
 ed an "818" area code in 1984, will become
 idition of a "310" area code in 1992. With
 Los Angeles area, including Beverly Hills,
 thorne, Southgate, and the City of Com-
 refore, it is the intent of the Legislature, by
 assure that area code boundaries are initially
 y boundaries and jurisdictions.

this act are technical and nonsubstantive in
 ns Code by SB 1547 of the 1993-94 Regular

: Boundaries of local access and

al remedies to redraw intrastate
 and transport area, or LATA,
 trictions that result in discrimi-
 nance for consumers of telecom-
 the Counties of Monterey and

as and price disclosure message
 nishing any live, recorded, or
 mation access telephone service
 mation charges and (2) price

information providers, described
 um of 12 seconds for a delayed
 closure message. If the delayed
 be billed from the time of the
 all be billed to the information
 ion. If the consumer disconnects
 nformation charge shall be billed

the information provider shall

if the information is a recorded

within the delayed timing period,
 l.

* indicate omissions.

(2 Pub Util C)

(2) This information shall be provided at the beginning of every call and at least three seconds shall be allowed at the end of the message within the delayed timing period for the consumer to hang up without being charged if he or she has not already disconnected the call. The information provider shall provide a tone to indicate the end of the delayed timing period.

(d) This section does not apply to audiotex programs with restricted access via personal identification number (PIN) code or special password.

(e) As used in this section, "delayed timing of information charges" means a service feature which delays commencement of billing of charges for a minimum of 12 seconds in order to provide the information required by subdivision (c).

(f) Every violation of this section is a misdemeanor.

Added Stats 1990 ch 1317 § 2 (SB 2765), operative July 1, 1991.

Note—Stats 1990 ch 1317 provides:

SECTION 1. (a) The Legislature finds and declares that certain information providers, primarily using 976 telephone numbers, providing live or recorded messages through the use of information access telephone service corporations, are misleading consumers with regard to the information available through their services and failing to clearly indicate that there will be a charge for the transmission of that information. Consumers have complained that they are being misled by these information providers because they are being charged for information different than was advertised. Most significantly, this problem has arisen primarily among information providers engaged in furnishing prospective tenants with rental information on residential real properties, or in furnishing jobseekers with information on employment opportunities.

(b) It is, therefore, the intent of the Legislature, in enacting Section 2889 of the Public Utilities Code, to ensure that users of information access telephone services are protected from these deceptive practices by requiring information providers to provide a disclosure message of specified information at the beginning of each call and to allow the consumer to discontinue the call at the completion of the message without charge.

SEC. 3. This act shall become operative on July 1, 1991.

§ 2889.2. Charge for call to "800" number

No telephone corporation or provider of information-access telephone services shall charge the subscribing party for a call made to a telephone number with an "800" prefix, unless the telephone number with an "800" prefix is an information service complying with the presubscription requirements imposed by Federal Communications Commission Docket No. 93-22.

Added Stats 1995 ch 170 § 3 (SB 664), effective July 24, 1995.

§ 2889.5. Change in provider

(a) No telephone corporation, or any person, firm, or corporation representing a telephone corporation, shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition has been authorized of a telephone subscriber until all of the following steps have been completed:

(1) The telephone corporation, its representatives or agents shall thoroughly inform the subscriber of the nature and extent of the service being offered.

(2) The telephone corporation, its representatives or agents shall specifically establish whether the subscriber intends to make any change in his or her telephone service provider, and explain any charges associated with that change.

(3) For sales of residential service, the subscriber's decision to change his or her telephone service provider shall be confirmed by an independent third-

(2 Pub Util C)

Beginning in 1992.

Italics indicate changes or additions. *** indicate omissions.

§ 2889.5

PUBLIC UTILITIES CODE

party verification company. For purposes of this provision, the confirmation by a third-party verification company shall be made as follows:

(A) The third party verification company shall meet each of the following criteria:

(i) Be independent from the telephone corporation that seeks to provide the subscriber's new service.

(ii) Not be directly or indirectly managed, controlled, or directed, or owned wholly or in part, by the telephone corporation that seeks to provide the new service or by any corporation, firm, or person who directly or indirectly manages, controls, or directs, or owns more than 5 percent of the telephone corporation.

(iii) Operate from facilities physically separate from those of the telephone corporation that seeks to provide the subscriber's new service.

(iv) Not derive commissions or compensation based upon the number of sales confirmed.

(B) The telephone corporation seeking to verify the sale shall do so by connecting the subscriber by telephone to the third-party verification company or by arranging for the third party verification company to call the subscriber to confirm the sale.

(C) The third-party verification company shall obtain the subscriber's oral confirmation regarding the change, and shall record that confirmation by obtaining appropriate verification data. The record shall be available to the subscriber upon request. Information obtained from the subscriber through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved subscriber against the telephone corporation or its employees who are responsible for the violation.

(D) Notwithstanding subparagraphs (A), (B), and (C), a service provider shall not be required to comply with these provisions when the customer directly calls the local service provider to make changes in service providers. However, a service provider shall not avoid the verification requirements by asking a subscribing customer to contact a local exchange service provider directly to make any change in the service provider. A local exchange service provider shall be required to comply with these verification requirements for its own competitive services. However, a local exchange service provider shall not be required to perform any verification requirements for any changes solicited by another telephone corporation.

(4) For sales of all nonresidential services, the subscriber's decision to change his or her service provider shall be confirmed through any of the following means:

(A) Independent third party verification, as set forth in paragraph (3) of subdivision (a).

(B) The telephone corporation shall mail to the subscriber an information package seeking confirmation of his or her change in the telephone corporation. The information package shall describe the new service and shall include a postage prepaid postcard or mailer that the subscriber can use to deny, cancel, or confirm a service order, as soon as possible, and wait 14 days after the information package is mailed before making the change in the telephone corporation. The telephone corporation shall make the change only if the subscriber does not cancel the change in service order.

Beginning in 1992.

-) Verify the subscriber's change in his or her telephone service provider by obtaining the subscriber's signature on a document fully explaining the nature and extent of the action. The document shall be a separate document whose sole purpose is to explain the nature and extent of the action.
-) Obtain the subscriber's authorization through an electronic means that provides the information, including the calling number, and confirms the change which the subscriber has given his or her consent.
-) Where the telephone corporation obtains a written order for service, the document shall thoroughly inform the subscriber of the nature and extent of the action. The subscriber shall be furnished with a copy of the signed document. The subscriber by his or her signature on the document shall indicate full understanding of the relationship being established with the telephone corporation. When a written subscriber solicitation or other document contains a letter of agency authorizing a change in service provider, in combination with other information including, but not limited to, inducements to subscribers to purchase service, the solicitation shall include a separate document whose sole purpose is to explain the nature and extent of the action. If any part of a mailing to a prospective subscriber is in language other than English, any written authorization contained in the mailing shall be sent to the same prospective subscriber in the same language.
- 5) The telephone corporation shall retain a record of the verification of the change for at least one year. These records shall be made available to the subscriber, the Attorney General, or the commission upon request.
- b) If a residential or business subscriber that has not signed an authorization notifies the telephone corporation within 90 days that he or she does not wish to change telephone corporations, the subscriber shall be switched back to his or her former telephone corporation at the expense of the telephone corporation that initiated the change.
- c) For purposes of this section, competitive services are those services where subscribers have the ability to presubscribe to a telephone service provider.
- d) When a subscriber changes telephone service providers, the change shall be conspicuously noticed on the subscriber's bill. Notice in the following form is deemed to comply with this subdivision:
- "NOTICE: Your local (or long distance) telephone service provider has been changed from (name of prior provider) to (name of current provider).
Cost of change: \$ — — — —"
- (e) Any telephone corporation that violates the verification procedures described in this section shall be liable to the telephone corporation previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the violation.
- (f) The remedies provided by this section are in addition to any other remedies available by law.
- (g) As described in federal law, no telephone corporation, or any person, firm, or corporation representing a telephone corporation, shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition has been authorized of a telephone subscriber without having on file, or having instituted reasonable steps designed to obtain, signed, dated orders for service from the subscriber. All orders shall be in the form prescribed in federal law for letters of agency. As described in federal law, the telephone corporation is respon-

*Notice
on bill*

*Nice if it
could be included*

*Written
verification*

Chapter ATCP 123

TELECOMMUNICATIONS AND CABLE TELEVISION SERVICES

ATCP 123.01 Definitions
 ATCP 123.02 Contract provisions
 ATCP 123.04 Subscription changes
 ATCP 123.06 Negative option billing

ATCP 123.08 Automatic renewal or extension
 ATCP 123.10 Prohibited practices
 ATCP 123.12 Activities regulated by public service commission
 ATCP 123.14 Initial applicability

Note: This chapter regulates subscription and billing practices related to telecommunications services and cable television services provided to consumers.

This chapter is adopted under authority of ss. 100.20 (2) and 100.207 (6) (e), Stats. Violations of this chapter may be subject to prosecution under ss. 100.20(6), 100.26 (3), (6) and, in the case of telecommunications services, s. 100.207 (6) (b) and (c), Stats. Persons damaged by violations of this chapter may bring private actions against the violators under ss. 100.20 (5) and 100.207 (6) (a), Stats.

Federal law recognizes that state administrative rules may under certain circumstances be preempted by federal law or administrative action. It is the position of the department that any provision of this rule which specifically conflicts with any federal law which now exists, or is later enacted or amended, would be superseded by the federal law.

ATCP 123.01 Definitions. In this chapter:

(1) "Appointed provider of long distance telecommunications services" means a provider selected for a consumer according to procedures prescribed by the federal communications commission after the consumer fails to select a provider.

(2) "Bill" means to represent to a consumer, directly or by implication, that the consumer is obligated to pay a stated amount for telecommunications services or cable television services pursuant to an existing contract with the provider of those services.

(3) "Cable television service" has the meaning given in s. 196.01(1p), Stats., and includes services billed to consumers by a multichannel video programming distributor as defined under 47 USC 522 (12).

(4) "Consumer" means any individual to whom a provider sells, leases, or offers to sell or lease telecommunications services or cable television services primarily for personal, family or household purposes.

(5) "Disclose" means to make a clear and conspicuous statement which is designed to be readily noticed and understood by the consumer and, if the disclosure is made in writing, which is designed to be retained by the consumer.

(6) "Final stage receiving device" means a telephone, television or other device that transforms an electronic signal into a user-recognizable service used by a consumer.

(7) "Individual" means a human being.

(8) "Long distance telecommunications service" means a long distance toll service provided on a direct-dialed, single message, dial-1 basis between local exchanges.

(9) "Person" means an individual, corporation, cooperative, partnership, limited liability company, business trust, or business association or entity.

(10) "Provider" means a person who sells, resells, leases, or offers to sell, resell or lease telecommunications services or cable television services to consumers. "Provider" includes an employee or agent who is authorized to act on behalf of and in the name of a provider.

Note: "Provider" includes a telemarketer or other person who sells telecommunications services or cable television services on behalf of and in the name of a provider.

(11) "Service offering" means a telecommunication service or cable television service that is offered under a single name or at a single price. A "service offering" includes a cable television "service tier," as defined in 47 USC 522.

(12) "Subscribe" means to enter into a subscription.

(13) "Subscription" means a contract between a provider and a consumer for telecommunications services or cable television services, or both, which are provided or billed to the consumer on a continuing or periodic basis. "Subscription" includes an oral, written or electronically recorded contract, and includes any material amendment to an existing contract.

(14) "Telecommunications carrier" has the meaning given in s. 196.01 (8m), Stats.

(15) "Telecommunications service" has the meaning given in s. 196.01 (9m), Stats.

(16) "Telecommunications utility" has the meaning given in s. 196.01 (10), Stats.

(17) "Written" or "in writing" means legibly printed on a tangible non-electronic medium, such as paper, which is delivered to a consumer, or legibly printed in electronic form on a television screen or computer monitor if the consumer can readily retrieve, store or print the video image for future reference. "Written" or "in writing" does not include presentation on a medium, such as a billboard, which cannot be conveniently retained by a consumer.

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97.

ATCP 123.02 Disclosure to subscriber. (1) **SUBSCRIPTION TERMS.** Except as provided under sub. (4) or (5), a provider shall disclose to a consumer the material terms of a proposed subscription at or before the time that the consumer subscribes. The disclosure shall include all of the following:

(a) A clear identification of each service offering included in the subscription, including the material consumer features, functions or capabilities which comprise that service offering.

Note: For example, the identification of a cable television service tier should identify the channels which comprise that tier.

(b) The price which the consumer must pay for each service offering. Prices may be disclosed as price schedules, rates or formulas, provided that the consumer can readily determine the total amount which he or she must pay. The price shall include the price for all goods and services which the provider bills to the consumer in connection with the service offering.

(c) All incidental charges that may affect the total amount payable by the consumer, including charges for connecting, changing or disconnecting service. This paragraph does not apply to finance charges or late payment charges if the provider discloses all of the following in writing when the provider first bills the consumer for the principal amount to which those finance charges or late payment charges apply:

1. The circumstances under which the finance charges or late payment charges will apply.

2. The amount of the finance charges or late payment charges, or the method for computing those charges if their amount is not yet known.

(d) The effective date of the subscription unless all of the following apply:

1. The effective date depends on the action of a third party outside the provider's control.

2. The provider discloses a good faith estimate of the effective date and a means by which the consumer may verify the effective date.

(e) The expiration date of the subscription, if any.

(f) Any limitations on the consumer's right to cancel the subscription at any time.

(2) **DISCLOSURE IN WRITING.** Except as provided under sub. (3), a provider shall make the disclosures under sub. (1) in writing. The provider shall disclose the material terms of the subscription in context with each other, and shall not separate those material terms by promotional information.

(3) **ORAL OR ELECTRONIC DISCLOSURE; WRITTEN CONFIRMATION.** If a consumer subscribes orally or electronically, the provider may make the disclosure under sub. (1) orally or electronically, provided that both of the following apply:

(a) The provider confirms the disclosure in writing on or before the 15th day after the consumer subscribes, or on or before the day that the provider first bills the consumer under the subscription, whichever is later. The provider may confirm the disclosure as part of a regular billing statement to the consumer.

Note: A provider may incorporate by reference, in its written confirmation under par. (a), information contained in a telephone book or other periodic reference document provided to the subscriber.

(b) The provider does one of the following:

1. Notifies the consumer that the consumer may cancel the subscription at any time without incurring any cancellation charge or disconnect fee.

2. Notifies the consumer that the consumer may cancel the subscription, without incurring any cancellation charge or disconnect fee, prior to a specified cancellation deadline which is not less than 3 days after the consumer receives the written confirmation under par. (a).

(4) **LONG DISTANCE TELECOMMUNICATIONS RATES; EXEMPTION.** A provider of long distance telecommunications services need not disclose specific long distance rates under sub. (1) if the provider discloses all of the following under sub. (1):

(a) A method by which the consumer may readily determine, without cost to the consumer, the specific rate for long distance telecommunications service between two points. Rates disclosures under this paragraph need not include discounts under par. (b) that will apply.

(b) Any discounts that will apply to long distance rates disclosed to the consumer under par. (a).

(5) **PAY-PER-VIEW CABLE TELEVISION CHARGES; EXEMPTION.** A provider of pay-per-view cable television service need not disclose per-view charges under sub. (1) if all of the following apply:

(a) The consumer does not incur the per-view charges unless the consumer specifically orders the services to which those charges pertain.

(b) The provider discloses the per-view charges at or before the time that the consumer orders the services to which those charges pertain.

(c) The provider discloses under sub. (1) any subscription charges which the consumer must pay for the right to order pay-per-view services under par. (a).

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97.

ATCP 123.04 Subscription changes. (1) **DISCLOSURE REQUIRED.** Except as provided under sub. (2), no provider may initiate any price increase or other subscription change without giving the consumer prior notice of that price increase or subscription change. The provider shall give the notice at least 25 days, but not more than 90 days, prior to the subscription change. The provider may give the notice as part of a regular billing statement to the consumer.

Note: Section 134.42(2), Stats., requires a cable television provider to give a consumer at least 30 days advanced written notice before deleting a service or instituting a rate increase. 47 USC 76.309 (3) (i) (B) requires a cable television provider to give

consumers a 30-day advance notice of any changes in rates or services regulated under 47 USC 543.

(2) **EXEMPTIONS.** Subsection (1) does not apply if any of the following apply:

(a) The consumer orders the subscription change, and the provider complies with s. ATCP 123.02 in connection with that order.

(b) The subscription change does not alter the price of the service offering or the total amount billed to the consumer, and does not materially alter the consumer features, functions or capabilities which comprise the service offering.

(c) The subscription change merely expands a service offering currently billed to the consumer without doing any of the following:

1. Increasing the price of that service offering or increasing the total amount billed to the consumer.

2. Combining that service offering with another service offering which the consumer can order separately, but which the consumer has not affirmatively ordered.

3. Making other material changes to the consumer features, functions or capabilities which comprise that service offering.

(d) The subscription change results from the expiration of terms granted to the consumer under an introductory or other promotional offer, provided that the provider disclosed both of the following to the consumer at or before the time that the consumer subscribed:

1. The duration of the promotional offer.

2. The terms that would apply after the promotional offer expired.

(e) The subscription change is limited to a change in long distance rates that are exempt from disclosure under s. ATCP 123.02 (4).

(f) The subscription change is limited to a change in pay-per-view cable television charges that are exempt from disclosure under s. ATCP 123.02 (5).

(g) Section ATCP 123.12 exempts the subscription change from coverage under this chapter.

(3) **DISCLOSURE FORM AND CONTENTS.** A provider shall make the disclosure under sub. (1) in writing. The disclosure shall do all of the following:

(a) Clearly describe the proposed subscription change, including any change in price, and any material change in consumer features, functions or capabilities.

Note: See s. ATCP 123.06 related to negative option billing.

(b) Specify the effective date of the proposed change.

(c) Disclose that the consumer may cancel any service offering directly or indirectly affected by the change, without incurring a cancellation charge or disconnect fee, effective not later than the effective date of the subscription change. This disclosure is not required if, under the terms of the subscription, the consumer may cancel service offerings at any time without incurring a cancellation charge or disconnect fee.

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97.

ATCP 123.06 Negative option billing. (1) **PROHIBITION.** Except as provided under subs. (2) or (3), no provider may bill a consumer for a service offering that the consumer has not affirmatively ordered. A consumer's failure to reject a service offering is not an affirmative order for service. A consumer's affirmative order for service may be made orally, electronically or in writing, subject to s. ATCP 123.02.

(2) **EXPANDED SERVICE OFFERING; EXEMPTION.** A provider need not obtain an affirmative order from a consumer before expanding a service offering currently billed to that consumer unless the expansion has the effect of combining that service offering with another service offering which the consumer can order separately but has not affirmatively ordered.

Note: See s. ATCP 123.04 related to advance notice of price increases and other subscription changes, including expansions of service offerings.

(3) **LONG DISTANCE TELECOMMUNICATIONS SERVICES: EXEMPTIONS.** (a) Subsection (1) does not prohibit a provider of telecommunications services from billing a consumer for services which that provider is required by law to deliver to that consumer.

(b) Subsection (1) does not prohibit a consumer's appointed provider of long distance telecommunications services, merely because that consumer did not affirmatively select that provider, from billing that consumer for services used by that consumer.

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97.

ATCP 123.08 Automatic renewal or extension. No subscription for a definite period of time may be renewed or extended beyond its scheduled termination date, pursuant to an automatic renewal or extension provision in the contract, unless one of the following applies:

(1) The consumer is free to cancel the contract at any time.

(2) The provider gives the consumer a written notice reminding the consumer of the scheduled automatic renewal or extension. The reminder notice shall be designed to be readily noticed and understood by the consumer. The notice shall be given at least 30 days but not more than 60 days prior to the scheduled effective date of the automatic renewal or extension.

Note: A written notice under this section may be included as part of any billing statement given to the consumer at least 30 days but not more than 60 days prior to the effective date of the automatic renewal.

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97.

ATCP 123.10 Prohibited practices. No provider may do any of the following:

(1) Offer to a consumer any prize, prize opportunity, or free or reduced price goods or services whose receipt is conditioned upon an agreement to purchase or lease telecommunications services or cable television services unless the provider discloses that a purchase is required in connection with every public announcement or advertisement of the prize, prize opportunity, or free or reduced price goods or services.

Note: See also s. 134.74, Stats., and ATCP 123.02.

(2) Misrepresent the provider's identity to a consumer.

(3) Misrepresent that a consumer has subscribed to or received a telecommunications service or cable television service.

(4) Misrepresent the terms of a subscription.

(5) Fail to identify, in each bill presented to a consumer, the service offerings for which the provider is billing the consumer.

(6) Fail to honor, on a timely basis, a consumer's request to cancel a telecommunications service or cable television service according to this chapter and the terms of the subscription for that service.

(7) Charge a consumer a fee for canceling a subscription or service offering unless the fee is disclosed to the consumer according to ss. ATCP 123.02 and 123.04.

Note: Section ATCP 123.04 (2) limits cancellation charges and disconnect fees in some cases, regardless of whether those fees are disclosed.

(8) Bill a consumer for telecommunications services or cable television services in violation of this chapter.

(9) Propose or enter into any contract with a consumer that purports to waive a consumer's rights under this chapter, or that purports to authorize any violation of this chapter.

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97.

ATCP 123.12 Activities regulated by public service commission. (1) This chapter does not apply to any of the following:

(a) Any activity, including any notice to a consumer of a subscription change, that is specifically authorized under ss. 196.194 (1), 196.207, 196.20, or 196.499 (4), Stats., or under a rule or order issued by the state of Wisconsin public service commission.

Note: For example, s. PSC 165.043 (5) requires a telecommunications utility to disclose specific information before providing a new non-basic service. Therefore, the more extensive disclosure requirements under s. ATCP 123.02(1) do not apply. However, if the disclosures required by the PSC are made orally, the disclosures must be confirmed in writing pursuant to s. ATCP 123.02 (3).

(b) A subscription change which a telecommunications provider implements by means of a tariff under ch. 196, Stats., other than a tariff change under s. 196.196 (3) or 196.499 (2), Stats.

(2) This chapter does not authorize any activity prohibited by ch. 196, Stats., or by the state of Wisconsin public service commission under ch. 196, Stats.

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97.

ATCP 123.14 Initial applicability. This chapter first applies to contracts, subscriptions, contract changes and subscription changes that take effect on or after January 1, 1997.

History: Cr. Register, July, 1996, No. 487, eff. 1-1-97.

to increase shall file with the
 agent shall review the request
 appropriateness of the request
 company. If the department
 information is required, the
 within 20 calendar days after
 provide adequate information
 it shall recommend denial of
 information. The commis-
 sion within 20 calendar days
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 change in costs must have oc-
 of conducting a new cost

for one or more services of.

terms or conditions of ser-
 application of the tariff, but
 according to the schedule

new service to its customers
 mission.

Subdivisions 1 to 4b and not
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this section must be served

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 of the bond. The bond

must be in favor of the state for the benefit of any customer who suffers the loss of a deposit or advance payment due to insolvency, cessation of business, or failure to return any unused portion of the deposit or advance payment. The bond must be filed with the department.

History: 1987 c 340 s 8, 1989 c 7 s 23-24

NOTE: See section 237.5799

237.65 AFFILIATED TRANSACTIONS.

Subdivision 1. **Definition.** For the purposes of this section, "affiliated company" means a person, company, corporation, or other entity in which the telephone company has an affiliated interest as defined under section 236B.48, subdivision 1.

Subd. 2. **Records.** Telephone companies, except companies that provide only services that have been found to be competitive, shall maintain records for a period of three years documenting transactions in excess of \$50,000 with an affiliated company. The documentation must contain:

- (1) the name of the affiliate;
- (2) a description of the transaction or contract;
- (3) the dollar value of the transaction or contract;
- (4) in the case of goods and services purchased from an affiliate, any evidence of efforts made by the telephone company to secure the same or functionally equivalent goods or services from a nonaffiliated supplier; and
- (5) in the case of services provided to an affiliate, any evidence of the fair market value of those goods or services.

Subd. 3. **Commission review; burden of proof.** In a proceeding for the approval of rates for noncompetitive services, the burden is on the company to prove that goods or services acquired from or sold to affiliates were transferred at reasonable value. The determination of reasonable value shall include but not be limited to durability, quality, service, and price.

History: 1987 c 340 s 9

NOTE: See section 237.5799

237.66 DISCLOSURE OF LOCAL SERVICE OPTIONS.

Subdivision 1. **Notice to local residential customers.** A telephone company, when a residential customer initially requests service or requests a change of service, and annually in the form of a bill insert, shall advise each residential customer of the price of all service options available to that customer. The requirement of an annual notice through a bill insert does not apply to long-distance service.

Subd. 1a. **Notice to customers.** (a) Each residential and commercial telecommunications carrier customer may elect to require that the telephone company serving the customer receive authorization from the customer before a request to serve that customer from a different intrastate telecommunications carrier than the carrier currently serving the customer is processed.

(b) For new installations, a telephone company shall notify a residential or commercial customer of the right described in paragraph (a) when the customer initially requests intrastate change service.

(c) Within one year of January 1, 1997, a telecommunications carrier shall notify each of its existing residential and commercial customers of the right described in paragraph (a). The notice may be made as a billing insert. Any customer notification of the rights set forth in this subdivision shall be provided utilizing uniform, competitively neutral language and the form, content, and style of the authorization shall be consistent with federal law and regulation and shall use language provided and approved by the public utilities commission.

(d) A customer may change this election at any time by notifying the telephone company of that decision. No separate charge may be imposed on the customer for electing to exercise the right described in paragraph (a) or to change that election, but a telephone company may recover in rates the reasonable costs of administering the election.

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(c) If a customer has elected to exercise the right described in paragraph (a), the telephone company shall not process a request to serve the customer by another telecommunications carrier without prior authorization from the customer. If a customer has not elected to exercise the right described in paragraph (a), the company may process a request to serve the customer by another telecommunications carrier.

(f) A carrier may request such a change if the customer has authorized the change either orally or in writing signed by the customer. If the carrier requests a change in a customer's service provider, the carrier must:

- (1) notify the customer in writing that the request has been processed; and
- (2) be able to present, upon complaint by the customer, verified authorization for the change by the customer.

If the initial authorization was made orally, the carrier must be able to present verified authorization received from the customer within 14 business days of the date the oral authorization was made.

(g) In the case of an oral authorization, if a telecommunications carrier does not receive the verified authorization within 14 business days of the date of the oral authorization, the carrier must either bear the risk that the change to the service of the carrier will be deemed unauthorized under paragraph (h) or:

- (1) immediately return the customer to the service of the customer's original service provider;
- (2) bear all costs associated with returning the customer; and
- (3) bill the customer for services rendered at the rate the customer would have paid for such services if the request to serve the customer had not been made.

(h) If the carrier is not able to present, upon complaint by the customer, verified authorization received from the customer as required under paragraph (f) and the carrier did not return the customer to the service of the customer's original service provider as required under paragraph (g), the change to the service of the carrier shall be deemed to be unauthorized from the date the carrier requested the change. In that event, the carrier shall:

- (1) bear all costs of immediately returning the customer to the service of the customer's original service provider; and
- (2) bear all costs of serving that customer during the period of unauthorized service.

(i) For purposes of paragraphs (f), (g), and (h), authorization required in those paragraphs may be verified utilizing any method that is consistent with federal law and regulation.

Subd. 2. Filing; exemptions. Copies of both the written notices and information provided to customer service representatives concerning the disclosure required under subdivision 1 must be filed once every 12 months with the commission and the department. Independent telephone companies, municipalities, and cooperative telephone associations are exempt from the requirements of this subdivision unless otherwise ordered by the commission.

Subd. 2a. Call blocking. A telephone company, when a residential customer initially requests service, shall advise each residential customer of the availability of all blocking options including 900 number blocking and international long-distance blocking.

Subd. 3. Enforcement. If, after an expedited procedure conducted under section 237.61, the commission finds that a telephone company is failing to provide disclosure as required under subdivision 1, or the notification required under subdivision 1a, paragraphs (b) and (c), it shall order the company to take corrective action as necessary.

History: 1987 c 340 s 10; 1994 c 449 s 1; 1996 c 340 s 2.3

NOTE: See section 237.5794

237.67 LEGISLATIVE REPORTS.

Beginning January 1, 1988, the commission and the department shall annually report to the legislature on the implementation of Laws 1987, chapter 340, and recommend changes necessary to assure high quality and affordable telephone services for the residents of the state.

History: 1987 c 340 s 11, 26; 1989 c 74 s 25; 1994 c 554 art 1 s 13

TELECOMMUNICATIONS--CONSUMER FRAUD--SLAMMING, LOADING

CHAPTER 69

H.F. No. 1123

AN ACT relating to telecommunications; establishing the practices of slamming and loading as consumer fraud; providing penalties and remedies; making permanent the requirement to disclose local telecommunications service options; amending Minnesota Statutes 1996, sections 237.121; 237.16, subdivision 5; 237.5799; and 237.66, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 325F.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 237.121, is amended to read:

237.121 PROHIBITED PRACTICES

(a) A telephone company or telecommunications carrier may not do any of the following with respect to services regulated by the commission:

(1) upon request, fail to disclose in a timely and uniform manner information necessary for the design of equipment and services that will meet the specifications for interconnection;

(2) intentionally impair the speed, quality, or efficiency of services, products, or facilities offered to a consumer under a tariff, contract, or price list;

(3) fail to provide a service, product, or facility to a consumer other than a telephone company or telecommunications carrier in accordance with its applicable tariffs, price lists, or contracts and with the commission's rules and orders;

(4) refuse to provide a service, product, or facility to a telephone company or telecommunications carrier in accordance with its applicable tariffs, price lists, or contracts and with the commission's rules and orders;

(5) impose restrictions on the resale or shared use of its services or network functions, provided that:

(i) it may require that residential service may not be resold as a different class of service; and

(ii) the commission may prohibit resale of services it has approved for provision for not-for-profit entities at rates less than those offered to the general public; or

(6) provide telephone service to a person acting as a telephone company or telecommunications carrier if the commission has ordered the telephone company or telecommunications carrier to discontinue service to that person.

(b) A telephone company or telecommunications carrier may not violate a provision of section 325F.693, with regard to any of the services provided by the company or carrier.

Sec. 2. Minnesota Statutes 1996, section 237.16, subdivision 5, is amended to read:

Subd. 5. REVOCATION AND TEMPORARY SUSPENSION. Any certificate of authority may, after notice of hearing and a hearing, be revoked or temporarily suspended by the commission, in whole or in part, for: the failure of its holder to furnish reasonably adequate telephone service within the area or areas determined and defined in the certificate of authority; failure to meet the terms and conditions of its certificate; or intentional violation of the commission's rules or orders; or intentional violation of any applicable state or federal law relating to the provision of telephone or telecommunications services.

Sec. 3. Minnesota Statutes 1996, section 237.5799, is amended to read:

237.5799 EXPIRATION

Sections 237.58, 237.59, 237.60, 237.61, 237.62, 237.625, 237.63, 237.64, 237.65, 237.66, and 237.68 expire on August 1, 1999.

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Additions are indicated by underline; deletions by strikethrough

Sec. 4. Minnesota Statutes 1996, section 237.66, is amended by adding a subdivision to read:

Subd. 1b. LOADING. (a) Except as provided in paragraph (b) or (c), a telephone company or telecommunications carrier providing local service shall not charge a telephone service subscriber as defined in section 325F.692 for a telephone or telecommunications service that is not required by the commission to be offered and for which the subscriber did not explicitly contract.

(b) If a charge is assessed on a per use basis for a service described in paragraph (a), the charge shall be applied as a credit to the subscriber's next monthly bill, if the subscriber notifies the telephone company or telecommunications carrier that the subscriber did not utilize the service or did not authorize the utilization of the service.

(c) A telephone company or telecommunications carrier that receives a notification from a telephone service subscriber under paragraph (b) shall inform the subscriber of the ability to block the services from future use by the subscriber, and shall block the services from future use by the subscriber, if the subscriber so requests. If a subscriber requests that the carrier or company not block the service or later requests to have the block lifted, the subscriber shall be responsible for charges caused by the future utilization of that service. The carrier or company may not charge a recurring fee for blocking the service.

Sec. 5. 325F.693 FRAUDULENT TELEPHONE SERVICES; SLAMMING.

Subdivision 1. DEFINITIONS. (a) For the purposes of this section, a "telephone service subscriber" means a person who contracts with a telephone company for telephone services or a telecommunications company for telecommunications services.

(b) The definitions contained in chapter 237 apply to this section.

Subd. 2. SLAMMING DEEMED CONSUMER FRAUD. (a) It is fraud under section 325F.69 to request a change in a telephone service subscriber's local exchange or interexchange carrier without the subscriber's verified consent.

(b) A telephone service subscriber may employ the remedies provided in section 237.66 for violations of paragraph (a). Section 8.31 may also be employed to remedy violations of paragraph (a).

(c) For the purposes of paragraph (a):

(1) the consent of the telephone service subscriber may be verified utilizing any method that is consistent with federal law or regulation;

(2) compliance with applicable federal law and regulation, or state law and rule, whichever is more stringent, is a complete defense to an allegation of consumer fraud under paragraph (a); and

(3) it is the responsibility of the company or carrier requesting a change in a telephone service subscriber's company or carrier to verify that the subscriber has authorized the change. A telephone company or telecommunications carrier providing local exchange service who has been requested by another telephone company or telecommunications carrier to process a change in a subscriber's carrier is only liable under this section if it knowingly participates in processing a requested change that is unauthorized.

Nothing in this section shall be construed to change a telephone company's or telecommunications carrier's obligations under section 237.66.

Sec. 6. EFFECTIVE DATE.

Sections 1 to 5 are effective the day following final enactment.

Presented to the governor April 28, 1997.

Approved April 29, 1997.

Additions are indicated by underline; deletions by strikethrough

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